Testimony of Marilyn Mullane Before the Government Operations Committee
State of Michigan House of Representatives
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Good morning, House Government Operations Committee members. I am Marilyn Mullane, the Director of Michigan Legal Services, an organization which has provided legal services to low-income families in Michigan for the past 30 years. First, I would like to thank you for the opportunity to comment on Michigan's current condemnation process for low-income families displaced by governmental takings. I have provided legal aid to low-income households in Michigan for the past 25 years, with a specialty practice in housing law. During that time, I have represented or provided advice to many low-income homeowners and tenants displaced by various condemnation projects in Detroit which included the GM Poletown project, the Chrysler Jefferson Plant Expansion project, Comerica Park, and several smaller projects such as Graimark, Southeastern High School in Detroit, and the Detroit casinos.

In cases where the condemnations are federally assisted (such as Poletown, and the Chrysler Plant Expansion), the Uniform Relocation Assistance and Real Properties Acquisition Act (URA), 42 USC 4601, *et seq.*, and implementing regulations at 49 CFR 24 apply. These laws provide for some additional relief for displaced low-income families. However, when the project is not federally assisted, there is very little relief available for these families under the Michigan Uniform Condemnation Act at MCL 213, *et seq.*

First, I would note that most low-income families are renters and not home-owners. While the definition of the "owner" of a property right appears broadly drafted in the statute to include "person, fiduciary, partnership association, corporation, or governmental unit or agency having an estate, title, or interest, including beneficial, possessory, and security interest, in a property sought to be condemned," (MCL 213.51(f)), often possessory interests are not compensated in condemnation proceedings because landlords evict the tenants in order to collect all of the condemnation proceeds. MCL 213.63 provides that just compensation awards are to be divided among the respective parties in interest, whether the interest is that of "mortgagee, lessee, lienor, or otherwise, in accordance with property evidence submitted by the parties in interest." This language may actually encourage evictions of tenants by property owners not interested in sharing the proceeds. Is there some way to protect against this predictable response? The federal act prohibits evictions after initiation of negotiations for the acquisition of the property and determines eligibility for tenant relocation benefits based on occupancy with reference to this date.

In federally assisted acquisitions (where the federal relocation act applies), there are relocation funds available to assist tenant households and the loss of condemnation compensation for any property interest usually presents less of an issue. Nevertheless such interests ought to be compensated as viable and recognizable property interests which are also taken in condemnations. One way to address this problem is to make certain that tenants are notified of condemnation proceedings so that their interests may be identified, protected and compensated. Another area of concern in the statute is the deduction of remediation costs from any just compensation awards pursuant to MCL 213.58. For low-income home-owners in depressed

real estate markets, this deduction could significantly decrease, if not eliminate the award. There should be an exception to this provision for home-owners.

The statute provides for reasonable attorney fees (not to exceed 1/3rd of the just compensation award) at MCL 213.66 for property owners who successfully challenge the necessity for the taking, legal sufficiency of the proceedings, or just compensation award. Since tenant interests are rarely adequately compensated, the 1/3rd cap, prevents them from obtaining counsel. In the Poletown, Jefferson Avenue Plant, Graimark and Comerica Park condemnation projects, it was rare for tenants to obtain private counsel. They were dependent upon scarce legal services resources for assistance to obtain federal relocation benefits under the URA in these federally assisted projects. Generally, there were no condemnation awards for the tenant possessory interests. Access to counsel in these cases is the best way to assure that these displaced households are fairly treated. Attorney fees ought to be available without a cap or with a flat cap that is not tied to compensation of the interest (since the interest, particularly for month-to-month tenants) is extremely small. (Most low-income households rent their homes on a month-to-month oral lease basis in Michigan.)

Some of the issues related to condemnation awards for low-income tenants and home-owners are addressed in federally assisted acquisitions in which the URA is available to finance gaps between condemnation awards and relocation to another property. But that is not the case for non-federally assisted acquisitions and the state relocation statute is a poor substitute. While the state statute at MCL 213.321 et seq., clearly applies to tenants (a "displaced person" is defined as "a person who vacates real property or removes his personal property therefrom pursuant to a program undertaken by a state agency which results in the acquisition of the real property in whole or in part, or in an order to vacate real property"), other than "advisory services", described MCL 213.322 and 323, there are no required relocation payments for tenants or homeowners under the state statute, other than "moving expenses" with a cap of $1,000. MCL 213.352. The state has discretion to match federal funds as permitted by federal law when there is a federally assisted acquisition (MCL 213.324). However, those are not the situations in which relocation assistance is needed (since the federal government already pays in these cases). It is needed in non-federally assisted acquisitions where the state is not obligated to provide any assistance. MCL 213.325 indicates that the state may, but is not required, to provide such assistance. Ideally, the statute should be amended to make this provision mandatory and provide for relocation benefits similar to federal benefits (capped at $5200 per tenant household). Minimally, the $1000 moving expenses cap should be increased.

Given the state of the State's budget, there might be some understandable concern about increasing the State's obligation to pay displaced persons. However, we need to remember that increasingly, private properties are condemned for an expanding definition of "public purpose" which benefits private developers. The displaced residents (homeowners and tenants) are those harmed by this process and the new business/private developer who benefits from the project, obtains a substantial subsidy (and often even the very opportunity to do the project, since the land would not otherwise be available because the purchase offers would be rejected) at the expense of the residents. There is no reason why the true costs of these acquisitions should not be passed on to the governmentally assisted developer.